

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

JEFFERY ALONZO SIMMS)	
)	
)	
Plaintiff)	C.A. No. 04-1205-SLR
)	
v.)	
)	
M.D. HARRY M. FREEMAN, ET AL)	JURY OF 12 DEMANDED
)	
Defendants.)	

ANSWER OF DEFENDANT ROBERTA F. BURNS, M.D.

Defendant Roberta F. Burns, M.D., responds as follows to the allegations set forth in the plaintiff's Complaint form.

1. Admitted that Roberta F. Burns, M.D., was a medical doctor under the employ of First Correctional Medical on August 24, 2004.
2. Roberta F. Burns, M.D., is without sufficient information to admit or deny plaintiff's allegations that he was denied emergency treatment and surgery on August 24, 2004.
3. Denied that Roberta F. Burns, M.D., had any role in the alleged injury or injury or disfigurement of the plaintiff on August 24, 2004.

AFFIRMATIVE DEFENSES

4. Plaintiff fails to state a claim upon which relief may be granted.
5. Plaintiff fails to state a 42 U.S.C. §1983 claim against Roberta F. Burns, M.D.
6. The complaint fails to state a claim against Roberta F. Burns, M.D., upon which plaintiff may recover with respect to all civil rights claims as Roberta F. Burns, M.D., was not deliberately indifferent to a serious medical condition.

7. Plaintiff failed to properly plead a medical malpractice action against defendant Roberta F. Burns, M.D.

8. Plaintiff failed to file an affidavit of merit pursuant to 18 Del. C. § 6853.

9. Roberta F. Burns, M.D., provided plaintiff with medical care that was appropriate for his conditions and which met the applicable standards of care.

10. Plaintiff has failed to proffer any medical expert testimony or support for his claims of medical negligence.

WHEREFORE, the defendant Roberta F. Burns, M.D., asks that the Complaint against her be dismissed with prejudice and all costs be assessed against the plaintiff.

McCULLOUGH & McKENTY, P.A.

/s/ Dana M. Spring

Daniel L. McKenty, Del. Bar No. 2689

Dana M. Spring, Del. Bar No. 4605

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Attorneys for Roberta F. Burns, MD

March 8, 2006

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CERTIFICATE OF SERVICE

I, **Dana M. Spring**, hereby certify that on this date a copy of the attached *Answer of Defendant Roberta F. Burns, M.D.*, was served electronically, and via first class mail, upon the following:

Jeffrey M. Austin, Esquire
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Department of Justice
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Wilmington, DE 19801

Jeffery Alonzo Simms
SBI # 198625
Delaware Correctional Center
Unit V-Building A-Tier
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Smyrna, DE 19977

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